



[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1215 and 1219

Revisions to Safety Standards for Durable Infant or Toddler Products: Infant Bath Seats and Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In accordance with section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), also known as the Danny Keysar Child Product Safety Notification Act, the U.S. Consumer Product Safety Commission (Commission, CPSC, or we) has published consumer product safety standards for numerous durable infant or toddler products, including infant bath seats and full-size cribs. These standards incorporated by reference the ASTM voluntary standards associated with those products, with some modifications. In August 2011, Congress enacted P.L. 112-28, which sets forth a process for updating standards that the Commission has issued under the authority of section 104(b) of the CPSIA. In accordance with that process, we are publishing this direct final rule, revising the CPSC's standards for infant bath seats and full-size cribs to incorporate by reference more recent versions of the applicable ASTM standards.

Because the changes to the ASTM standards make them essentially identical to the standards that the CPSC has issued previously, no changes to the products are required.

We also received notification from ASTM of an updated ASTM standard for toddler beds. However, the Commission is not accepting the revised ASTM standard for toddler

beds, and therefore, the CPSC standard for toddler beds will remain as it currently is stated at 16 CFR part 1217.

DATES: The rule is effective on November 12, 2012, unless we receive significant adverse comment by **[insert date 30 days after publication in the FEDERAL REGISTER]**. If we receive timely significant adverse comments, we will publish notification in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of November 12, 2012. The compliance dates for the full-size crib standard remain as stated in 16 CFR 1219.1(b).

ADDRESSES: You may submit comments, identified by Docket No. [CPSC-2012-0039](#), by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through www.regulations.gov.

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including

any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: For information related to the full-size crib standard, contact Troy Whitfield, Office of Compliance and Field Operations, Consumer Product Safety Commission, Bethesda, MD 20814-4408; telephone (301) 504-7548; twhitfield@cpsc.gov. For information related to the infant bath seat standard, contact Carolyn Manley, Office of Compliance and Field Operations, Consumer Product Safety Commission, Bethesda, MD 20814-4408; telephone (301) 504-7607; cmanley@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Danny Keysar Child Product Safety Notification Act. The Consumer Product Safety Improvement Act of 2008 (CPSIA, Pub. Law 110-314) was enacted on August 14, 2008. Section 104(b) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires that these standards are to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. Under the statute, the term “durable infant or toddler product” explicitly includes infant bath seats, full-size cribs, and toddler beds. In accordance with section 104(b), the

Commission has published safety standards for these products that incorporate by reference the relevant ASTM standards with certain modifications that make the voluntary standard more stringent.

P.L. 112-28. On August 12, 2011, Congress enacted P.L. 112-28, amending and revising several provisions of the CPSIA, including the Danny Keysar Child Product Safety Notification Act. The revised provision sets forth a process for updating CPSC's durable and infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. This provision states that if an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard. See P.L. 112-28, section 3.

Notification and Review of Revisions. On May 16, 2012, ASTM notified us of ASTM's approval and publication of revisions to ASTM F1169, Standard Consumer Safety Specification for Full-Size Baby Cribs; ASTM F1967, Standard Consumer Safety Specification for Infant Bath Seats; and ASTM F1821, Standard Consumer Safety

Specification for Toddler Beds. In its notification, ASTM stated that revisions to these standards have occurred since the enactment of P.L. 112-28.

The Commission has reviewed the revisions. ASTM's revision to its toddler bed standard, ASTM F1821-11b, does not include several of the modifications that the Commission made in its mandatory standard at 16 CFR part 1217. Therefore, we have determined that ASTM F1821-11b does not improve the safety of toddler beds, and we are notifying ASTM that the Commission will retain the CPSC toddler bed standard at 16 CFR part 1217 as it is.

As explained below, ASTM's revisions to its standards for infant bath seats and full-size cribs make these revised ASTM standards essentially identical to the CPSC mandated standards for these products. In accordance with P.L. 112-28, unless the Commission determines that these revisions do not improve the safety of these consumer products, the revised ASTM standards for infant bath seats and full-size cribs will become the new CPSC mandatory standard for those products. We are publishing this direct final rule revising the incorporation by reference that is stated in each of these rules so that they will accurately reflect the revised version of the relevant ASTM standards.

B. Revisions to the Particular ASTM Standards

1. Infant Bath Seats

On June 4, 2010, the Commission published a final rule issuing a safety standard for infant bath seats that incorporated by reference ASTM F1967-08a, Standard Consumer Specification for Infant Bath Seats, with certain modifications to make the standard more stringent. 75 FR 31691.

ASTM notified us that the current version of the ASTM standard for infant bath seats is ASTM F1967-11a, which was approved and published in September 2011. Two previous revisions, ASTM F1967-10 and ASTM F1967-11, made minor changes to the ASTM standard. ASTM F1967-11a includes all the modifications that CPSC made when it issued its mandatory standard. Thus, the revised ASTM standard, ASTM F1967-11a, is essentially identical to CPSC's mandatory standard for infant bath seats at 16 CFR part 1215. Because the revised ASTM standard is essentially identical to the current mandatory standard, the Commission will not make the determination that "the proposed revision does not improve the safety" of infant bath seats, under P.L. 112-28. Therefore, in accordance with P.L. 112-28, the revised ASTM standard for infant bath seats becomes the new CPSC standard 180 days from the date we received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1215, to reference the revised ASTM standard.

2. Full-Size Cribs

On December 28, 2010, the Commission published a final rule issuing a standard for full-size cribs that incorporated by reference ASTM F1969-10, with two modifications to make the standard more stringent. 75 FR 81766.

ASTM notified us that the current version of the ASTM standard for full-size cribs is ASTM F1169-11, which was approved and published in September 2011. A previous revision, ASTM F1169-10a, made one change that clarified testing of cribs with folding or moveable sides. This change was identical to one of the modifications that the Commission made in its mandatory standard. ASTM F1169-11 has two additional revisions. One is editorial and corrects a typographical error. The other change tracks a

modification that the Commission made in its mandatory standard: it removes a provision that required retightening of hardware between tests. With these changes, ASTM F 1169-11 is now essentially identical to the full-size crib standard that the Commission mandated at 16 CFR part 1219. Because the revised ASTM standard is essentially identical to the current mandatory standard, the Commission will not make the determination that “the proposed revision does not improve the safety” of full-size cribs. Therefore, in accordance with P.L. 112-28, the revised ASTM standard for full-size cribs becomes the new CPSC standard 180 days from the date we received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1219 to reference the revised ASTM standard.

The 2010 crib rule fulfilled the direction in the Danny Keysar Child Product Safety Notification Act to issue standards for durable infant or toddler products, and it also implemented direction specific to cribs in section 104(c) of the CPSIA. In accordance with section 104(c) of the CPSIA, the CPSC’s crib standards (covering both full-size and non-full-size cribs) apply to persons and entities not required to comply with other CPSC standards, such as child care facilities, family child care homes, and places of public accommodation. 75 FR 81786-87. The crib rule became effective on June 28, 2011. It provided for two compliance dates. The first date, June 28, 2011, applies to all entities subject to the crib rule, except for child care facilities, family child care homes, and places of public accommodation. The second date, December 28, 2012, applies to child care facilities, family child care homes, and places of public accommodation. 75 FR at 81781. In June 2011, the Commission gave additional time to companies that

provide short-term crib rentals; accordingly, they have until December 28, 2012, to meet the crib standards.

P.L. 112-28 contains a provision limiting the application of revisions when ASTM revises its crib standards. That language states that such revisions shall apply only to a person that manufactures or imports cribs, unless the Commission determines that application to any person described in paragraph (2) [of section 104(c) of the CPSIA] is necessary to protect against an unreasonable risk to health or safety. If the Commission determines that application to a person described in paragraph (2) [of section 104(c) of the CPSIA] is necessary, it shall provide not less than 12 months for such person to come into compliance. See P.L. 112-28, section 3(b). According to this provision, changes to CPSC's crib standards would apply only to crib manufacturers and importers, not to the other entities mentioned in section 104(c)(2) who are not usually subject to CPSC's standards, such as child care facilities, family child care homes, and places of public accommodation.

ASTM's revision to its full-size crib standard included the modifications that the Commission made when it issued the CPSC's mandatory standard for full-size cribs. Thus, there is no substantive difference between ASTM's revised standard, ASTM F1169-11, and the currently mandated standard that the Commission published in December 2010. Therefore, the CPSC's action in this direct final rule, which revises the incorporation by reference in 16 CFR part 1219, does not require any change by the persons and entities subject to the CPSC's full-size crib standard. Those who manufacture, import, or sell full-size cribs continue to be required to meet the same full-size crib requirements as they have been required to meet since June 28, 2011. Child care

facilities, family child care homes, places of public accommodation, and businesses that rent cribs for short terms will be required to meet the same requirements for full-size cribs beginning on December 28, 2012. Because the revision contemplated by this direct final rule does not require any change by the persons subject to the mandatory standard published in 2010, the provision set forth in P.L. 112-28 limiting the application of revisions is without effect in this instance.

C. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” We believe that in the circumstances of these revisions to ASTM standards upon which CPSC’s durable infant or toddler product standards are based, notice and comment is not necessary. P.L. 112-128 provides for nearly automatic updating of durable infant or toddler product standards that the Commission issues under the Danny Keysar Child Product Safety Notification Act, if ASTM revises the underlying voluntary standard and the Commission does not determine that the revision “does not improve the safety of the consumer product covered by the standard.” Nevertheless, without Commission action to update the incorporation by reference in its mandated standards, the standard published in the Code of Federal Regulations will not reflect the revised ASTM standard. Thus, the Commission believes that it is appropriate to issue a rule revising the incorporation by reference in these circumstances. However, little would be gained by allowing for public comment because P.L. 112-28 requires that the

CPSC's mandatory standard must change to the revised voluntary standard (unless the Commission has made the requisite finding concerning safety). The revisions to the infant bath seat standard and full-size crib standard merely reflect the modifications that the Commission made previously when it mandated these standards. It is possible, that in the future, revisions to other voluntary standards that were the basis for Commission standards under section 104(b) of the CPSIA could include substantive changes that do more than reflect the Commission's changes. Therefore, we believe that it is appropriate to set in place a procedure that allows the Commission to receive significant adverse comments but at the same time accommodates the nearly automatic update procedure set forth in the statute.

In its Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS recommends using direct final rulemaking when an agency employs the "unnecessary" prong of the good cause exemption to notice and comment rulemaking.

Thus, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments. Unless we receive a significant adverse comment within 30 days, the rule will become effective November 12, 2012. In accordance with ACUS's recommendation, we consider a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change. Should the Commission receive a

significant adverse comment, it would withdraw this rule. The Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking providing an opportunity for public comment.

D. Effective Date

Under the procedure set forth in P.L. 112-28, when a voluntary standard organization revises a standard upon which a consumer product safety standard issued under the Danny Keysar Child Product Safety Notification Act was based, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. In accordance with this provision, this rule establishes an effective date that is 180 days after we received notification from ASTM of revisions to these standards. As discussed in the preceding section, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective November 12, 2012.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The changes to the incorporation by reference in the infant bath seat and full-size crib standards will not result in any substantive changes to the standards. Therefore, this rule will not have any economic impact on small entities.

F. Environmental Considerations

The Commission’s regulations provide a categorical exclusion for the Commission’s rules from any requirement to prepare an environmental assessment or an environmental impact statement because they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

G. Paperwork Reduction Act

Both the infant bath seat standard and the full-size crib standard contain information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). No changes have been made to those sections of the standards. Thus, these revisions will not have any effect on the information collection requirements related to those standards.

H. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a “consumer product safety standard under [the Consumer Product Safety Act (CPSA)]” is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the State requirement is identical to the federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.) The Danny Keysar Child Product Safety Notification Act (at section 104(b)(1)(B) of the CPSIA) refers to the rules to be issued under that section as “consumer product safety standards,” thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule

issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

I. Certification

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted in the preceding discussion, standards issued under section 104(b)(1)(B) of the CPSIA are "consumer product safety standards." Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because infant bath seats and full-size cribs are children's products, they must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. (They also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the phthalate content requirements in section 108 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in the Danny Keysar Child Product Safety Notification Act.)

J. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission has previously published notices of requirements for accreditation of third party conformity

assessment bodies for testing infant bath seats (75 FR 31688 (June 4, 2010)) and full-size cribs (75 FR 81789 (December 28, 2010)). The notices of requirements provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing infant bath seats to 16 CFR part 1215 (which incorporated ASTM F1967-08a with modifications) and for testing full-size cribs to 16 CFR part 1219 (which incorporated ASTM F1969-10 with modifications). This rule revises the references to the standards that are incorporated by reference in the CPSC's infant bath seat and full-size crib standards. As discussed previously, the revised ASTM standards for these products make them substantively identical to the infant bath seat and full-size crib standards that the Commission mandated. Thus, revising the references will not necessitate any change in the way that third party conformity assessment bodies are testing these products for compliance to CPSC standards. Therefore, the Commission considers the existing accreditations that the Commission has accepted for testing to these standards also to cover testing to the revised standards.

List of Subjects

16 CFR Part 1215 and Part 1219

Consumer protection, Incorporation by reference, Imports, Infants and children, Law enforcement, Safety, Toys.

For the reasons stated above, the Commission amends 16 CFR chapter II as follows:

PART 1215 – SAFETY STANDARD FOR INFANT BATH SEATS

1. The authority citation for part 1215 is revised to read as follows:

Authority: Sections 3 and 104 of Pub. L. 110-314, 122 Stat. 3016 (August 14, 2008); section 3 of Pub. L. 112-28, 125 Stat. 273 (August 12, 2011).

2. Revise § 1215.2 to read as follows:

§ 1215.2 Requirements for infant bath seats.

Each infant bath seat shall comply with all applicable provisions of ASTM F1967-11a, Standard Consumer Safety Specification for Infant Bath Seats, approved September 1, 2011. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA, phone: 610-832-9585; <http://www.astm.org/>. You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

PART 1219 – SAFETY STANDARD FOR FULL-SIZE BABY CRIBS

3. The authority citation for part 1219 is revised to read as follows:

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110-314, Sec. 104, 122 Stat. 3016 (August 14, 2008); section 3 of Pub. L. 112-28, 125 Stat. 273 (August 12, 2011).

.4. Revise § 1219.2 to read as follows:

§ 1219.2 Requirements for full-size baby cribs.

Each full-size baby crib shall comply with all applicable provisions of ASTM F1169-11, Standard Consumer Safety Specification for Full-Size Baby Cribs, approved August 15, 2011. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box 0700, West Conshohocken, PA 19428; telephone 610-832-9585; www.astm.org. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Dated: July 25, 2012

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2012-18483 Filed 07/30/2012 at 8:45 am; Publication Date: 07/31/2012]